

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

July 20, 2010

In the Matter of J.L. NORDBERG, Minor.

No. 295233

St. Clair Circuit Court

Family Division

LC No. 09-000121-NA

Before: FORT HOOD, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Respondent father appeals as of right from the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g). We reverse. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

In October 2007, the mother of the minor child at issue contacted the Department of Human Services (DHS) and asked that her children¹ be removed because she could not deal with them. At the time of the removal, respondent father was incarcerated at a Marquette prison for convictions involving resisting a police officer, fleeing a police officer, and operating a vehicle while impaired. Respondent father also had previously been incarcerated for five other offenses. DHS established a parent-agency agreement with the goal of reunification of the children with their mother. A DHS foster care specialist testified that she mailed copies of the agreement and any court orders to respondent father in prison. Additionally, there was testimony that respondent father attended some of the court hearings by telephone. Respondent father was told to provide any certificates and awards obtained during his imprisonment to the foster care specialist. However, the DHS workers testified that they were unable to provide services to incarcerated individuals.

Every three months, the DHS worker sent an updated plan to respondent father, and he would sign and return it. Additionally, the mother of respondent father would keep DHS apprised of any prison transfers. Respondent father expressed an interest in being reunited with the minor child upon his release from prison. Apparently, during his imprisonment, he completed substance abuse counseling and a life skills class.

¹ There were two minor children involved in the petition to terminate with regard to the birth mother. The children's mother has not appealed the order terminating her parental rights, and therefore, only the minor child of respondent father is the subject of this appeal.

The children were returned to their mother's care on October 23, 2008, and the case was closed on January 8, 2009. However, within two days, new complaints were alleged, and the minor children were removed from the home again. Despite DHS involvement, a petition to terminate parental rights was filed because the mother failed to benefit from the services.

Respondent father was paroled on September 30, 2009. He immediately contacted DHS upon his release from prison and expressed his intent to provide for the minor child at issue. During his imprisonment, he did not communicate with the minor child, explaining that he was unaware that he could do so. Upon his release, respondent father was referred to substance abuse and life skills programs, but funding for parenting classes was currently unavailable. Respondent father acknowledged his mistakes, but expressed his intention to provide for the minor child. In light of the criminal history that resulted in an absence of four years from the minor child's life, the trial court found that there was clear and convincing evidence to terminate his parental rights pursuant to MCL 712A.19b(3)(g) and that termination was in the best interests of the child. Respondent father appeals as of right.

A trial court's finding that a statutory ground for termination has been established by clear and convincing evidence and the best interests determination are reviewed for clear error. MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A state is not relieved of the duty to engage an absent parent on the basis of incarceration. *In re Mason*, ___ Mich ___; ___ NW2d ___ (2010), slip op p 8. Additionally, the DHS may not focus services on one parent to the exclusion of the other. *Id.* Rather, the agency must engage in reasonable efforts to reunify the child and family in all cases except where aggravated circumstances are presented. *Id.* When a respondent is not afforded a meaningful and adequate opportunity to participate because of DHS's failure to adhere to court rules and statutory requirements, termination of parental rights is premature. *Id.*

In the present case, termination of respondent's parental rights was premature. DHS efforts focused solely on the mother of the minor child at issue. Upon his release from prison, there was no evidence regarding when and if respondent could provide proper care and custody. Moreover, there was no evidence regarding a possible relative placement in the interim. *Mason*, slip op pp 16-22. Therefore, on the basis of *Mason*, the termination of respondent's parental rights was premature.

Reversed.

/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens